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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/539,459	04/06/2006	Peter Kwasny	13441/I	8389
26646 7590 11/26/2010 KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004				
EXAMINER NICHOLS IL ROBERT K				
ART UNIT		PAPER NUMBER		
3754				
MAIL DATE		DELIVERY MODE		
11/26/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/539,459

Applicant(s)

KWASNY, PETER

Examiner

ROBERT K. NICHOLS II

Art Unit

3754

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 February 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4-22 and 25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4-22 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(c), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(c) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 02/08/2010 has been entered.

Response to Amendment

This office action is responsive to the amendment filed on 02/08/2010. As directed by the amendment: claim 1 has been amended, claims 2, 3, 23 and 24 have been cancelled, and no new claims have been added. Thus, claims 1, 4-22 and 25 are presently pending in this application.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4-22 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kwasny (WO 02/076852) in view of Leoncavallo (US 6,305,576).

Regarding claim 1, Kwasny discloses a pressurized can including a body 2, a dome 3 accommodating a valve 4, a concavely shaped bottom 5, an inner casing 7 attached to a cup 6, a push rod 9 arranged in the inner casing 7, the push rod 9 being actuated through the cup 6 and intended to force open the inner casing 7, with the inner casing 7 being joined to the cup 6 via a spring cage 11, the spring cage 11 containing a spring-loaded trigger 12 which acts on the push rod 9 which, in turn, acts on a cover 8 arranged at the can-side end of the inner casing 7, characterized in that the cover 8 is integral with the inner casing 7 which seals the inner casing 7 at its can-side end hermetically against the contents of the pressurized can 1 and which is split open by the push rod 9 when the trigger 12 is actuated (see figures 1-6). It is noted, "integral" is not necessarily restricted to one-piece article.--In re Kohno (CCPA 157 USPQ 275).

Regarding claim 4, Kwasny discloses the inner casing 7 being provided, at its extreme end, with a receptacle 18 for securing it to the spring case 11 (see figure 6).

Regarding claim 5, Kwasny discloses a second membrane 15 being arranged in the transition area from the inner casing 7 to the receptacle 18 (see figure 2).

Regarding claim 6, Kwasny discloses the receptacle 18 and a spring case 11 being clinched together (see figure 6).

Regarding claim 7, Kwasny discloses the free end of the receptacle 18 being placed over an outer circumferential projection of the spring cage 11 (see figure 7).

Regarding claim 8, Kwasny discloses the inner casing 7 being arranged on a cup 6 located in the bottom 5 of the pressurized can 1 (see figures 1 and 2).

Regarding claim 9, Kwasny discloses the cup 6 with the inner casing 7 being arranged in the dome 2 of the pressurized can 1 (see figures 1 and 2).

Regarding claim 10, Kwasny discloses the trigger 12 being provided with a receptacle 33 for a trigger pin 14 or a spray head (see figure 6).

Regarding claim 11, Kwasny discloses the inner casing 7 being secured to the cup 6 arranged in the bottom 5 of the can 1 and is provided with an attached membrane 8 (see figure 1).

Regarding claim 12, Kwasny discloses the inner casing 7 and the cup 6 being joined together by crimping (see figure 2 and page 4 of translation).

Regarding claim 13, Kwasny discloses the spring cage 11 being fixed in a central pocket 19 of the cup 6 (see figure 2).

Regarding claim 14, Kwasny discloses the push rod 9 being provided with several wings 17 along a central axis (see figure 2).

Regarding claim 15, Kwasny discloses the push rod 9 having the shape of a sloped and sharp-edged hollow cylinder 16 at its can-side end (see figure 2).

Regarding claim 16, Kwasny discloses the wings 17 are provided with cut-outs and/or recesses (see figure 2).

Regarding claim 17, Kwasny discloses a seal 20 being arranged between the spring cage 11 and the cup 6 in the area of the central pocket 19 (see figure 2).

Regarding claim 18, Kwasny discloses the spring cage 11 being provided, at its valve-side end, with an internal projection 21 acting as an abutment for a spring element 13 (see figure 2).

Regarding claim 19, Kwasny discloses the trigger 12 being provided, at its cup-side end, with a peripheral projection 22 acting as an abutment for the spring element 13 (see figure 2).

Regarding claim 20, Kwasny discloses the trigger 12 being provided, at its cup-side end, with a sealing seat 23 having the form of a circumferential projection (see figures 3-5).

Regarding claim 21, Kwasny discloses the inner casing 7 and the membrane 8 being made from aluminum (see page 3 of translations).

Regarding claim 22, Kwasny discloses the spring cage 11 being provided with at least one cut- out 34 (see figure 6).

With respect to claim 25, Kwasny discloses the can being for liquid two-component systems, in particular two-component sealing foams, two- component glues or two-component coatings (see paragraphs 1 and 2 of translation). Furthermore, it is noted that "while features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. In re Schreiber, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997).

With further respect to claim 1, Kwasny discloses all the elements of the claimed invention except the cover being a membrane integral with and forming one piece with the inner casing.

Leoncavallo teaches a can or container for holding, dispensing and mixing at least two components including an inner casing 30, a push rod 40 arranged in the inner casing 30 which may be actuated to force open the inner casing 30, wherein a membrane 42 is torn open allowing mixing of the two components (see figure 1 and column 4, lines 51-57). Leoncavallo discloses the membrane may be affixed to an end of the inner casing 30 (see fig. 1 and col. 2, lines 9-14), or as an alternative to a separately affixed membrane, the membrane may be integral with and

forming one piece with the inner casing (see fig. 2 and col. 2, lines 35-39) in order to provide a manner of a safely and efficiently holding and subsequently mixing fluid materials in an aseptic manner within a container.

Thus, a person of ordinary skill has good reasons to pursue the known options or finite number of solutions, i.e. forming the cover as a membrane integral with and forming one piece with the inner casing, wherein the membrane is torn open upon actuation of the pushrod, as suggested by Leoncavallo, or a cover affixed to the inner casing, for the predictable result of providing the inner casing with a efficient seal, being broken upon actuation, for the mixture of two components in an aseptic manner within a container, since the finite number of options are within the technical grasp of a person of ordinary skill in the art.

With respect to the limitation of claim 1 which recites “wherein the pressure inside the inner casing is lower than the pressure outside the inner casing and said membrane is comprised of a material sufficiently flexible so that in response to the higher pressure outside the inner casing, said membrane bulges into said inner casing.” The Examiner notes that “flexible” is a relative term, particularly since virtually anything will flex if enough pressure is applied to it. Accordingly, the membrane of the device of the combination of Kwasny and Leoncavallo is capable of bulging into the inner casing when the pressure inside the inner casing is lower than the pressure outside the inner casing. Notwithstanding, it is noted that since the device of the combination of Kwasny and Leoncavallo discloses all the structural components which read on those of the instant invention. Thus, the device of the combination of Kwasny and Leoncavallo is capable of performing the same desired functions as the instant invention.

Response to Arguments

Applicant's arguments filed 02/08/2010 have been fully considered but they are not persuasive. Features of Applicant's claimed invention are disclosed by Kwasny and Leoncavallo as illustrated in this office action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT K. NICHOLS II whose telephone number is (571)270-5312. The examiner can normally be reached on Mon-Friday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kenneth Bomberg/
Primary Examiner, Art Unit 3754

/R. K. N./
Examiner, Art Unit 3754